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MILITARY: Remaining Haditha cases mired in courts

By MARK WALKER - Staff Writer

In the nearly two years since eight Camp Pendleton Marines were charged with killing 24 Iraqi civilians in Haditha, six of the men have been exonerated, and widespread interest in the case has waned.

Still, the final chapters in the 2005 killings that reverberated around the world, affected the military's rules of engagement and played a large role in how the war was viewed have yet to be written.

Appellate court hearings for the two remaining defendants over the next month will establish the outline of how Haditha's story will end.

One of the defendants is the battalion commander at Haditha, Lt. Col. Jeffrey Chessani, who headed the 3rd Battalion, 1st Marine Regiment. Dereliction-of-duty charges against him were thrown out by a military judge earlier this year based on a finding that unlawful command influence stained his case beyond repair.

Prosecutors appealed the dismissal, leaving his case unresolved.

If the appeal is successful, charges that Chessani failed to meet his duty by not ordering a full-scale investigation will stand and he will face court-martial at Camp Pendleton.

If the appeal fails, the Marine Corps will have two choices ---- drop the case or start from scratch.

The other remaining defendant is squad leader Staff Sgt. Frank Wuterich, who is accused of nine counts of voluntary manslaughter. His case is mired in legal wrangling over military prosecutors' requests for non-broadcast material from a CBS "60 Minutes" interview conducted months before he was charged in December 2006.

His court-martial proceedings are on hold until that issue is decided.

The decisions from the two appellate court hearings will set the remaining legal path for the two accused Marines.

## **First up**

On Wednesday, five civilian judges who comprise the U.S. Court of Appeals for the Armed Forces in Washington will hear arguments on whether the "60 Minutes" outtakes should be made available to a military judge, and

possibly to prosecutors.

The issue pits network giant CBS against the Marine Corps. The Marine Corps argues the outtakes may contain statements implicating Wuterich in criminal conduct and help prove he ignored rules of engagement and is guilty of manslaughter and related offenses.

CBS, citing First Amendment issues, says a judge was right to deny prosecutors access to those outtakes, calling the effort a "fishing expedition."

A lower court ruled the military judge should view the outtakes and then decide if they contain relevant information that should be shared with prosecutors.

Attorneys representing CBS and the Marine Corps will each have 20 minutes to argue their cases. Once the court rules, the losing side can petition the U.S. Supreme Court to consider an appeal.

In the meantime, Wuterich remains at Camp Pendleton, working in logistics as decisions affecting his fate are played out in a courtroom 2,600 miles away.

## **October date for Chessani**

Next month, three military judges who preside over the Navy-Marine Corps Court of Criminal Appeals will hear arguments on the Marine Corps' appeal of the ruling dismissing the charges against Chessani.

In a filing in advance of the hearing, the Marine Corps argued that the finding that unlawful command influence tainted Chessani's case beyond repair was based on an "erroneous view of the law" and that the judge "abused his discretion in fashioning the remedy that he did."

The ruling dismissing the dereliction charges came after Chessani's judge at Camp Pendleton found that a senior legal adviser to then-Lt. Gen. James Mattis, who was overseeing the Haditha prosecutions, should not have had any role in shaping the case.

The adviser, Col. John Ewers, had been one of the military's initial investigators into the killings and is a potential prosecution witness.

The judge ruled Ewers mere presence at meetings between Mattis and prosecutors created an unacceptable perception of undue influence in the general's decisions.

The Marine Corps argues that Mattis, who has since been promoted to general ---- four stars ---- and is no longer overseeing the Haditha case, was never unduly influenced.

"There is no evidence that Gen. Mattis relied on Col. Ewers for any information, opinions or legal advice," the Marine Corps says in its appeal. "Instead, the record shows Gen. Mattis to be an independent commander highly unlikely to be prone to manipulation by his staff officers."

In their response to the Marine Corps' appeal, Chessani's attorneys contend Mattis' testimony was "self-serving"

and that unlawful command influence has permeated the Haditha prosecutions "like a cancer affecting every aspect of this case from discovery to witnesses."

## **What happened**

What is undisputed about what happened at Haditha is this: On the morning of Nov. 19, 2005, a roadside bomb exploded, destroying a Humvee, killing a lance corporal and injuring two other Marines.

Five men who emerged from a car that drove up immediately after the bombing were believed by Wuterich, he said, to be insurgents so he and another squad member shot all five.

The Marines then searched nearby homes for the bomber and those firing at them. They ended up killing 19 more people, including several women and children.

In the aftermath, Marine commanders concluded that the deaths, while tragic, came during a legitimate response to the convoy being attacked.

That changed in the face of public and media pressure, resulting in four enlisted men being charged initially with murder and four officers charged with offenses tied to not conducting an exhaustive investigation.

The killings also led commanders to reinforce adherence to the rules of engagement governing when troops can use lethal force, with an emphasis on positive identification of a hostile threat. Among the changes is that a review is conducted whenever civilians die in the crossfire of conflict in Iraq.

In investigating the case, the Marine Corps granted immunity to as many as 17 Marines, including some who took part in the shootings and one who later acknowledged urinating on the head of one of the victims.

In the months since the eight were charged, the service withdrew charges against five following hearings at Camp Pendleton and one trial resulted in an acquittal.

Former Marine attorney and military law expert Gary Solis said that while the legal system has worked in the Haditha affair, he believes it remains an example of "prosecutorial overreaching."

## **A sticking point**

Haditha has faded from public attention in the U.S., but it remains part of the political landscape in Iraq.

Last week, the Reuters news agency reported that Iraqi Deputy Prime Minister Barham Salih said discussions with the U.S. on a new security pact were stymied in part over legal protection for U.S. troops.

Haditha and other incidents such as the Abu Ghraib prison scandal have colored the talks aimed at establishing the policy for continued U.S. troop presence when a United Nations mandate expires at the end of the year, the agency reported.

"(It) is probably the most contentious issue," Salih was quoted as saying. "There is a history to it. It is very sensitive."

The U.S. and the Iraqis have agreed that private contractors in Iraq would lose the legal immunity they now have under the new pact, but have yet to reach consensus on how to treat troops accused of crimes.

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